



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/165814

PRELIMINARY RECITALS

Pursuant to a petition filed April 29, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the Lakeland Care District in regard to Medical Assistance, a hearing was held on August 18, 2015, at Oshkosh, Wisconsin.

Note: the record was held open until August 25, 2015, to give the parties an opportunity to submit additional documentation. The Petitioner called on August 18th and asked for additional time. Lakeland Care District did not object, so the deadline was extended to August 28, 2015. The Petitioner called on August 24, 2015, and left a message indicating she still needed a little more time. Lakeland Care District did not object, so the deadline was extended to September 4, 2015.

On August 27, 2015, the Petitioner submitted her typed notes. They have been marked as Exhibit 5 and entered into the record.

On August 24, 2015, Lakeland Care District submitted a packet that included various case notes and language from the 2015 contact with the Department of Health Services. The packet has been marked as Exhibit 6 and entered into the record.

The issue for determination is whether Lakeland Care District correctly denied the Petitioner's request for a clothes dryer.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: David Simonsmeier, Case Manager
Lakeland Care District
3415 Custer Street

Manitowoc, WI 54220

ADMINISTRATIVE LAW JUDGE:
 Mayumi M. Ishii
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Winnebago County.
2. On March 12, 2015, Lakeland Care District sent the Petitioner a Notification of Non-Covered Benefit, advising her that her request for a replacement clothes dryer was being denied, because clothes dryers are not part of the Family Care benefit package. The notice did not advise the Petitioner of her appeal rights. (Exhibit 3)
3. The Petitioner filed a request for fair hearing that was received on April 29, 2015. (Exhibit 2)
4. The Petitioner has her own washing machine and she had her own dryer before it broke. (Testimony of Petitioner and Mr. Simonsmeier)
5. There are coin operated laundry facilities in Petitioner's apartment building, located in an upstairs area. (Exhibit 5)
6. Petitioner receives time for supportive home care assistance with laundry and Lakeland Care District is open to increasing the time allowed for the task. (Testimony of Mr. Simonsmeier)

DISCUSSION

The Family Care Program is a subprogram of Wisconsin's Medical Assistance (MA) program and is intended to allow families to arrange for long-term community-based health care and support services for older or impaired family members without resort to institutionalization, *Wis. Stats.* §46.286; *Wis. Admin. Code* §DHS 10.11. The Family Care Long Term Care program (FCP) is a long-term care benefit for the elderly, people with physical disabilities and those with developmental disabilities. *Medicaid Eligibility Handbook (MEH)*, §29.1.

An individual, who meets the functional and financial requirements for Family Care, participates in Family Care by enrolling with a Care Management Organization (CMO), which, in turn, works with the participant and his/her family to develop an individualized plan of care. *See Wis. Stats.* §46.286(1) and *Wis. Admin. Code* §DHS 10.41. The CMO, in this case Lakeland Care District, implements the plan by contracting with one or more service providers.

Wis. Admin. Code DHS 10.41(2) states that:

Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department's contract, each CMO shall have available at least the services and support items covered under the home and community-based waivers under 42 USC 1396n (c) and ss. 46.275, 46.277 and 46.278, Stats., the long-term support community options program under s. 46.27, Stats., and specified services and support items under the state's plan for medical assistance. In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

Wis. Admin Code DHS 10.44(2)(f) states that the CMO, in partnership with the enrollee, shall develop an individual service plan for each enrollee that meets all of the following conditions:

1. Reasonably and effectively addresses all of the long-term care needs and utilizes all enrollee strengths and informal supports identified in the comprehensive assessment under par. (e) 1.
2. Reasonably and effectively addresses all of the enrollee's long-term care outcomes identified in the comprehensive assessment under par. (e)(2) and assists the enrollee to be as self-reliant and autonomous as possible and desired by the enrollee.
3. Is cost-effective compared to alternative services or supports that could meet the same needs and achieve similar outcomes. ...

One of Petitioner's desired outcomes is to be as independent as possible with her activities of daily living and instrumental activities of daily living. (See Exhibit 4) Petitioner requested a clothes dryer so she would not have to rely on others to assist her with her laundry. (Testimony of Petitioner)

It is the position of Lakeland Care District that even though a clothes dryer would decrease the Petitioner's need for supportive home care assistance to complete laundry, that they are not obligated to pay for one, because it is not a part of the Family Care Benefit Package.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving a request for a new service, the applicant has the initial burden to establish he or she met the application requirements. Estate of Gonwa ex rel Gonwa v. Wisconsin Dept. of Health and Family Services, 265 Wis.2d 913, 668 N.W.2d 122, 2003 WI App. 152. Thus, Petitioner bears the burden to prove that she meets the criteria for approval for a new clothes dryer.

The Petitioner suffers from a number of conditions, including myotonic dystrophy and spastic paraplegia. (See Exhibit 4) As such, she is wheelchair dependent. (Id.)

It is undisputed that the Petitioner qualifies for Family Care at the Nursing Home Level of Care. According to the MCO contract, the following services are part of the Family Care benefit package for individuals at a nursing home level of care:

1. Adaptive aids which are defined as, "controls or appliances that enable members to *increase their abilities to perform activities of daily living* or control the environment in which they live", such as patient lifts, control switches or service pets;
2. Adult Day care services;
3. Assistive technology/communication aide, meaning, "an item, piece of equipment or product system, whether acquired commercially, *modified or customized* that is used to increase, maintain or improve functional capabilities of members at home, work and in the community.";
4. Care/case management;
5. Consultative clinical and therapeutic services for caregivers;
6. Consumer education and training services;
7. Counseling and therapeutic services;
8. Environmental accessibility adaptations (home modifications);
9. Financial management services;
10. Habilitation Services;
11. Home delivered meals;
12. Housing counseling;
13. Personal Emergency Response System;
14. Prevocational Services;

15. Relocation Services;
16. Residential Care;
17. Respite care services;
18. Self-directed personal care services;
19. Skilled nursing services;
20. Specialized medical equipment and supplies, meaning items, “necessary to maintain the member’s health, manage a medical or physical condition, improve functioning or enhance independence. *Items or devices provided must be of direct medical or remedial benefit to the member*”;
21. Support Broker;
22. Supported employment;
23. Supportive home care;
24. Training services for unpaid caregivers;
25. Specialized Transportation;
26. Vocational planning and support;

(Pages 281-309 of the contract¹ in Exhibit 6)

The Petitioner argues that a clothes dryer is an adaptive aid.

A clothes dryer does not increase a person’s ability to do laundry. A reaching or grabbing tool that helps a person remove laundry from a dryer would be an adaptive aid, but the dryer itself is not an adaptive aid. Indeed, whether Petitioner has a dryer in her home does not affect the Petitioner’s level of ability to put in clothes, pull them out and fold them. As such it is not an adaptive aid.

I note that in its definition of an adaptive aid, the contract indicates that it is a control or appliance that enables members to *increase their abilities to perform activities of daily living*. Wis. Admin. Code §DHS 10.13(1m) defines “activities of daily living”, as “bathing, dressing, eating, mobility, transferring from one surface to another, such as bed to chair and using the toilet”. Thus, even if one could argue that a clothes dryer increased the Petitioner’s ability to do laundry, it still would not fall under the definition of an adaptive aid, because laundry is not an activity of daily living.

A clothes dryer does not fall into any of the other categories of covered services in the Family Care benefit package. Indeed, it is not considered assistive technology, because it is not a piece of equipment that is modified or customized to increase an individual’s functional capacity at home. It is not a home modification and it is not a piece of specialized medical equipment, since it does not provide direct medical or remedial benefit. Thus, it is found that Lakeland Care District correctly denied the Petitioner’s request for a clothes dryer.

Petitioner expressed concerns that the amount of time allowed for supportive home care assistance with laundry is insufficient. Petitioner is encouraged to discuss this matter with her interdisciplinary team. If Lakeland Care District denies her request to increase time for assistance with laundry, the Petitioner can file a NEW appeal.

CONCLUSIONS OF LAW

Lakeland Care District correctly denied the Petitioner’s request for a clothes dryer.

¹ The contract may also be viewed on-line at:

<https://www.dhs.wisconsin.gov/familycare/mcos/contract.htm>

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

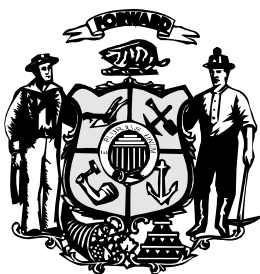
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 8th day of September, 2015.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 8, 2015.

Lakeland Care District
Office of Family Care Expansion
Health Care Access and Accountability